he was vice president of the Harvard Law School Federalist Society and he authored an article entitled ''Why Learned Hand Would Never Consult Legislative History Today.'' In this article, Mr. Filip argues that legislative history should be rejected by judges because it reflects nothing more than the desires of congressional staff and lobbyists, and because it does not reflect the majority will of Congress. More important, Mr. Filip wrote that, when confronted with statutory language that would lead to an absurd result, a judge should apply his or her own reasoning rather than legislative history.

The senior Senator from Illinois met with Mr. Filip to address his background and suitability to be a Federal judge.

Senator DURBIN is a thoughtful man and I respect his judgment. Senator DURBIN's willingness to supply this nomination says alot. I am hopeful that Mr. Filip will be a person of his word; that he will follow the law and not seek out opportunities to overturn precedent or decide cases in accord with his private beliefs rather than his obligations as a judge. I also sincerely hope that Mr. Filip will treat all those who appear before him with respect, and will not abuse the power and trust of his position. Sometimes, we take a risk allowing a nominee to be confirmed. This is, frankly, one of those times.

Unfortunately, the Senate has taken a risk and confirmed other nominees of this President who assured the committee that they would follow precedent and would not be results-oriented. In their brief time on the bench, they have already proven to be judicial activities eager to roll back individual rights and limit the authority of Congress to protect civil rights. A number of President Bush's 30 circuit court nominees already confirmed by the Senate have written significant opinions that show their bias in favor of powerful business interests over individual Americans.

For example, Jeffrey Sutton was one of Bush's most controversial appellate court nominees to be confirmed. At the time of his nomination, his record raised serious concerns. He had aggressively pursued a national role as the leading advocate of States' rights and pushed extreme positions in order to limit the ability of Congress to act to prevent discrimination and protect civil rights. His answers to questions posed by Judiciary Committee members did not show that he would be able to put aside his years of passionate advocacy in favor of States' rights and against civil rights. After a lengthy floor debate, he was confirmed by a vote of 52–41, which was the fewest votes in favor of any judicial nominee in the last 20 years and more than enough negative votes to have sustained a filibuster.

In less than 1 year on the bench, he has already issued a dissenting opinion essentially in favor of States' rights and that would have limited Congress' authority under the Commerce Clause. In this case, decided in December, the question was whether a core function of municipal government—the provision of firefighting services—impacts interstate commerce such that an individual can be indicted under a Federal antiarson statute for destroying a fire station. The majority Sixth Circuit panel held that the fire station was used in an activity affecting interstate commerce, relying on the express language of the statute.

Judge Sutton's dissent is a remarkable opinion whose beginning evidences that he has turned his passionate advocacy into judicial activism. His opinion begins, ''Some say the world will end in fire, Some say in ice.'' Judge Sutton concludes that the Federal arson law only applies to buildings with an ''active employment for commercial purposes,'' thereby seeking to narrow the law significantly. His opinion forcefully states that to ''conclude otherwise is to embrace the view that even the most attenuated connections to commerce will suffice in prosecuting individuals under this statute.'' In Judge Sutton's view, arson is a local crime and the ''National Legislature'' had not clearly conveyed its purpose to regulate an area traditionally regulated by the States.

Ironically, his dissent cautions that ''Federal courts should not casually read a statute in a way that alters the Federal-State balance.'' However, he himself ignores the plain language of the statue and legislative history in his attempts to do just that—to alter the balance in a way that favors his own personal and ideological view of States' rights.

John Roberts is a second controversial nominee who, in his few months on the bench, has already displayed a preference for pursuing political and ideological goals above following precedent. Judge Roberts recently issued a troubling dissent from a decision by the full D.C. Circuit that would have indulged another request by the Bush administration to keep secret the records of Vice President CHENEY's energy task force.

The case was part of a continuing effort on behalf of the Vice President to avoid compliance with numerous court orders requiring him to provide records of his meetings with the National Energy Policy Development Group. Two nonprofit organizations brought litigation claiming that the Vice President's task force had violated Federal law by not making its records public. In order to maintain the secrecy of these records, the Vice President had filed an emergency petition for a remedy that the majority noted ''is a drastic one, to be invoked only in extraordinary situations.'' The majority in the case stated that, were they to accept the Vice President's arguments, they would in effect ''have transformed executive privilege from a doctrine designed to protect Presidential communications into virtual immunity from suit'' and noted that ''the President is not 'above the law,' he is subject to judicial process.''

The full D.C. Court of Appeals denied Vice President CHENEY's petition for rehearing en banc. Judge Roberts dissented. He would have indulged the Vice President's desperate attempts to avoid compliance with court orders by granting a motion for rehearing, despite the fact that the D.C. Circuit's five judge majority was the fourth panel of judges to hold that these records must be made available.

A third example of a recently confirmed Bush nominee who has continued to pursue his ideological and political agenda on the bench—as many of us feared at the time of his nonimation—is Judge Dennis Shedd. Judge Shedd wrote the opinion in a ruling so hostile to organized labor that one of the most conservative judges on that court harshly stated that Shedd's opinion ''overstepped [the] boundaries of a reviewing court.''

In this case, the National Labor Relations Board and an administrative law judge found that an employer had unlawfully solicited nine of its employees to sign antiunion statements and had unlawfully withdrawn recognition of the union. Judge Shedd ignored the applicable standard of review and asserted his own view of the facts to conclude that the NLRB had erred in its determination. Approaching the case from a position hostile to organized labor, Judge Shedd ''reconstructed'' the facts of the case, and allowed an employer, who had previously been found to have used illegal tactics in order to decertify a union, to escape any responsibility. Judge Wilkinson's strong dissent highlighted the expertise of the NLRB in examining an employer's conduct and that the reviewing court's role was limited to determining whether the NLRB had taken a permissible view of the evidence.

In other cases, as many of us had feared, President Bush's circuit court nominees are already handing down decisions to roll back individual rights, civil rights and Congress' authority. Among these are:

A majority opinion by Judge Gibbons, on the Sixth Circuit, which fails to provide accommodation to a person with multiple sclerosis under the Americans with Disabilities Act;

A dissent by Judge Shedd in a bankruptcy case, which would have led to foreclosure on a family farm—a decision which the majority said ''misses the mark''; and

A dissent by Judge Rogers in a Title VII case involving illegal retaliation against an African-American employee which would have made it difficult for any employee to present their retaliation claims to a jury.

The President has claimed time and again that he seeks only to fill the bench with judges who will follow the rule of law. He claims that he ''has no litmus test'' for determining who will